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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE MALDONADO,

Defendant and Appellant.

B292272

(Los Angeles County
Super. Ct. No. PA045406)

APPEAL from convictions of the Superior Court of Los Angeles County, Daniel B. Feldstern, Judge. Affirmed and remanded with directions.

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Taylor Nguyen, Deputy Attorney General, for Plaintiff and Respondent.

This court previously granted Rene Maldonado's petition for writ of habeas corpus and directed the trial court to resentence him. The trial court resentedenced Maldonado, and Maldonado appeals from the ensuing judgment. Maldonado's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, identifying no issues and requesting that this court review the record and determine whether any arguable issue exists on appeal. We have reviewed the record and conclude that the matter must be remanded for the trial court to impose or strike the Penal Code¹ section 667.5 prior prison enhancement. We affirm the convictions and remand to the trial court with directions.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, a jury convicted Maldonado of two counts of attempted first degree murder and two counts of being a felon in possession of a firearm. Jurors found that the attempted murders were committed willfully, deliberately, and with premeditation and that a principal personally and intentionally used and discharged a firearm within the meaning of section 12022.53, subdivisions (b), (c), and (e)(1). Jurors found that all crimes were committed for the benefit of a criminal street gang. Maldonado admitted that he suffered a prior conviction for a serious or violent felony and admitted one prior one-year enhancement within the meaning of section 667.5, subdivision (b).² The trial court sentenced Maldonado to

¹ All statutory citations are to the Penal Code.

² Jurors found not true allegations that a principal caused great bodily injury to one of the victims and that Maldonado personally used and discharged a firearm.

consecutive terms for the two attempted murders and concurrent terms for two counts of being a felon in possession of a firearm. The trial court struck the section 667.5, subdivision (b) enhancement in the interest of justice.

In an opinion filed January 22, 2007, this court reversed one count of being a felon in possession of a firearm and ordered Maldonado to be resentenced. Subsequently, by order dated February 22, 2018, this court granted Maldonado's petition for writ of habeas corpus and ordered Maldonado to be resentenced again.

Following the order granting Maldonado's petition for writ of habeas corpus, the trial court resentenced Maldonado. The trial court denied Maldonado's motion to strike the firearm enhancements finding that Maldonado's criminal history "justif[ied] the full imposition of those enhancements."³ For each count of attempted murder, the trial court ordered Maldonado to serve sentences of life in prison with the possibility of parole plus a 20 year determinate sentence for the firearm enhancement under section 12022.53, subdivisions (c) and (e)(1). The minimum eligibility term for each attempted murder was 14 years (7 years doubled under the "Three Strikes" law). The trial court ordered the sentences to run consecutively. As required by this court's February 2018 order, the trial court imposed and stayed the gang

³ In 1987, the juvenile court sustained a petition alleging that Maldonado committed an assault with a deadly weapon. As a juvenile, Maldonado also had petitions sustained for transporting marijuana, selling marijuana, and giving false information to a police officer. As an adult, Maldonado was convicted of inflicting corporal injury on a spouse or cohabitant, battery, and assault with a firearm. He also was convicted of misdemeanor possession of marijuana.

enhancement. The trial court also imposed and stayed the firearm enhancements under section 12022.53, subdivision (b). The court imposed a concurrent four year sentence for the conviction of being a felon in possession of a firearm. This consisted of the midterm of two years doubled for purposes of the Three Strikes law. The court ordered the clerk to prepare an amended abstract of judgment and forward the amended judgment to the Department of Corrections.

Maldonado timely appealed. This court sent notice to Maldonado on April 5, 2019, permitting him to file a supplemental brief. Maldonado did not file a supplemental brief.⁴

DISCUSSION

We have examined the entire record as required by *People v. Wende, supra*, 25 Cal.3d at pp. 438–441. (See also *Smith v. Robbins* (2000) 528 U.S. 259, 278–284.) We conclude that Maldonado’s sentence is unauthorized because the trial court failed to impose or strike the section 667.5 enhancement.⁵ (*In re Renfrow* (2008) 164 Cal.App.4th 1251, 1256 [failure to impose or strike enhancement results in unauthorized sentence].) An unauthorized sentence is “ ‘subject to judicial correction when it ultimately [comes] to the attention of the trial court or [reviewing court.]’ ” (*Ibid.*)

⁴ The parties filed supplemental briefs on the issue of whether the case should be remanded for the trial court to impose or strike the enhancement.

⁵ A challenge to an unauthorized sentence is not forfeited by failing to raise it in the trial court. (*People v. Scott* (1994) 9 Cal.4th 331, 354.)

DISPOSITION

The convictions are affirmed. Upon remand, the trial court shall impose or strike the section 667.5, subdivision (b) enhancement. The court shall forward an amended abstract of judgment to the Department of Corrections and Rehabilitation.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.